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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROMAN COPPOLA

Appeal 2009-011829
Application 10/568,656
Technology Center 2800

Before MAHSHID D. SAADAT, CARLA M. KRIVAK, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a non-final rejection of claims 1, 4, 6-13, and 19-23. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

Appellant's claimed invention relates to a photographic system and method (Spec. 2:14-23).

Independent claim 1, reproduced below, is representative of the subject matter on appeal:

1. A photographic system, comprising:

an inflatable structure that defines a cavity sufficiently large to contain a plurality of people, props, and equipment; and

wherein the structure comprises a translucent wall that is colored to produce a uniform chroma key colored backdrop to a subject being photographed from inside the cavity.

REJECTIONS

The Examiner rejected claims 1 and 6-8 under 35 U.S.C. § 102(b) as anticipated by Leary (US 6,061,969; May 16, 2000).

The Examiner rejected claims 1, 6-8, 10, and 11 under 35 U.S.C. § 103(a) based upon the teachings of Leary as evidenced by Oles (US 5,946,500; Aug. 31, 1999).

The Examiner rejected claim 4 under 35 U.S.C. § 103(a) based upon the teachings of Leary and Huebner (US 6,343,184 B1; Jan. 29, 2002).

The Examiner rejected claim 9 under 35 U.S.C. § 103(a) based upon the teachings of Leary and Simens (US 6,282,842 B1; Sep. 4, 2001).

The Examiner rejected claims 12 and 13 under 35 U.S.C. § 103(a) based upon the teachings of Leary and Sadler (US 4,164,829; Aug. 21, 1979).

The Examiner rejected claims 19, 20, and 22 under 35 U.S.C. § 103(a) based upon the teachings of Leary, Oles, and Huebner.

The Examiner rejected claim 21 under 35 U.S.C. § 103(a) based upon the teachings of Leary, Oles, Huebner, and Aptekar (US 2005/0144018 A9; Jun. 30, 2005).

The Examiner rejected claim 23 under 35 U.S.C. § 103(a) based upon the teachings of Leary, Oles, Huebner, and Sadler.

ANALYSIS

§ 103

The Examiner finds Leary's greenhouse discloses all the structural elements of claim 1 and is capable of providing a uniform chroma key colored backdrop to a subject being photographed (Ans. 4-5). The Examiner also finds the limitation "to produce a uniform chroma key colored backdrop to a subject being photographed from inside the cavity" non-structural (Ans. 11).

Appellant contends the Examiner's finding the limitation "to produce a uniform chroma key colored backdrop . . ." non-structural is incorrect because if the claimed wall is not colored to produce a uniform chroma key colored backdrop, it is inoperable for use in chroma replacement (App. Br. 5-6). Appellant argues Leary's pigmented greenhouse is not colored "to produce a uniform chroma key colored backdrop" because it does not have uniformity of color and uniformity of surface texture (App. Br. 6-8; Reply Br. 3). Further, Appellant asserts, Leary's greenhouse is not blue or green, and thus is not a chroma key color, which is a color "suitable for use in a background replacement method" and is not both translucent and pigmented (App. Br. 6; Reply Br. 3; Spec. 4:17-19). Rather, Leary discloses the

greenhouse can either be translucent or opaque, but only the opaque embodiment can be pigmented (App. Br. 6).

The limitation “to produce a uniform chroma key colored backdrop to a subject being photographed from inside the cavity” does not impart additional structure to claim 1 (Ans. 11). Rather, this limitation merely describes a property of the translucent, colored wall of claim 1, namely, that it be a uniform chroma key colored backdrop. That is, only the color of the wall is defined as suitable for use in a background replacement method.

We agree with the Examiner that claim 1 is obvious over Leary’s greenhouse, as evidenced by Oles. Appellant’s Specification states the “color used for the background can be a chroma key color (*e.g.* blue or green),” which indicates blue and green are only a subset of the possible chroma key colors, and implies other colors may also be chroma key colors (Spec. 4:17-18). The Examiner’s position that any solid color can be a chroma key color has not been contested by Appellant and Appellant acknowledges blue and green are “the most often” used chroma key colors (Reply Br. 3). The Examiner also finds Oles discloses any solid color can be used in a background or chroma replacement method (Ans. 5). Thus, because Leary discloses the greenhouse can be pigmented (colored), it meets the limitation of a uniform chroma key colored backdrop (Ans. 11-12).

Regarding Appellant’s assertion that Leary’s greenhouse is not both translucent and pigmented, Leary discloses one embodiment in which “the outer wall 34 and the inner wall 36 are preferably constructed of a transparent or translucent flexible thermoplastic material,” and another embodiment in which the walls “are preferably constructed of a light filtering or opaque flexible thermoplastic material” (App. Br. 6; Leary, col.

5, ll. 33-42). Leary also discloses the “inflatable greenhouse 10 may be made starting with a clear or pigmented, blow molded plastic sphere” (col. 5, ll. 61-62). Thus, Leary does not restrict using pigmented plastic in the opaque embodiment of the greenhouse, as Appellant asserts. Rather, as the Examiner finds, “one of ordinary skill in the art would recognize that a wall of pigmented color can be translucent,” and thus “the wall of Leary can be chosen to be both pigmented and translucent” (Ans. 12-13).

Therefore, the Examiner’s rejection of claim 1 as obvious under § 103 is sustained. Claims 6-8, 10, and 11, which depend from claim 1 and are not separately argued, are also obvious for the above reasons.

Appellant does not contest the rejections of claims 4, 9, 12, 13, and 19-23 other than to state Leary, Oles, and the other cited references do not disclose the limitation “to produce a uniform chroma key colored background,” as recited in claim 1, or the similar limitation “to produce a chroma key colored background,” as recited in claim 19 (App. Br. 9-13). As discussed above, Leary discloses this feature. Therefore, the rejections of claims 4, 9, 12, 13, and 19-23 are sustained.

§ 102

In light of our affirmance under 35 U.S.C. § 103, we do not reach the merits of this case with respect to claims 1 and 6-8 under 35 U.S.C. § 102. See *In re Best*, 562 F.2d 1252, 1255 (CCPA 1977) (affirming an alternative § 102/§ 103 rejection “as anticipated under 35 U.S.C. § 102 or as obvious under 35 U.S.C. § 103” (emphasis added)). A decision need not resolve all rejections to be complete. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 426 (2007) (not reaching alternate basis because obviousness sufficient to dispose of case). Resolution of a single rejection for a claim renders other

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rejections moot. *See, e.g.*, 37 C.F.R. § 41.50(a)(1) (“The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmation of the decision of the examiner on that claim . . .”). Moreover, any resolution of the statutory subject matter rejection is likely to affect the prior art rejections. The order in which to reach the rejections and whether all rejections should be reached is a matter of sound discretion guided by logic, precedent, and overall process efficiency. 37 C.F.R. § 41.125(a)

DECISION

The Examiner’s decision rejecting claims 1, 4, 6-13, and 19-23 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

babc